

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

RAKE PROPERTIES, LLC

PLAINTIFF

V.

CIVIL ACTION NO.1:06CV578 LTS-RHW

**XL SPECIALTY INSURANCE COMPANY and
COMMUNITY BANK, COAST, BILOXI,
HARRISON COUNTY, MISSISSIPPI**

DEFENDANTS

MEMORANDUM OPINION

The Court has before it Defendant XL Specialty Insurance Company's (XL) alternative motions to dismiss Defendant Community Bank (Community) as a defendant or to realign the parties to reflect their true interests in this controversy. If the parties are realigned, as requested by XL, there will be complete diversity of citizenship and the requisite amount in controversy under 28 U.S.C. §1332.

Plaintiff Rake Properties, LLC (Rake) is the named insured under an insurance policy issued by Defendant XL. Defendant Community Bank is the holder of a note secured by a deed of trust on the insured property and a loss payee under the XL policy. The underlying dispute in this action concerns the adjustment of insured losses that occurred during Hurricane Katrina.

The state court complaint states no cause of action against Community Bank. The complaint asserts only that the bank is a necessary party. (Complaint Paragraph III)

It appears to me that the interests of the plaintiffs and the bank are aligned in this action. Both plaintiffs and the bank will benefit from a successful recovery under the XL policy. In these circumstances, realignment is proper, even after removal. See: *Jackson HMA, Inc. v. St. Paul Fire & Marine Ins. Co.*, 246 F.Supp.2d 535 (S.D.Miss.2003).

Accordingly, I will grant the motion to realign, and I will deny the motion to dismiss without prejudice to the right of Community Bank to renew this motion if it does not wish to participate in this action.

An appropriate order will be entered.

DECIDED this 14th day of August, 2006.

s/ L. T. Senter, Jr.

L. T. Senter, Jr.
Senior Judge